Implementation of the Decisions and Judgments of African Regional Human Rights Tribunals: Reflections on the Barriers to State Compliance and the Lessons Learnt

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ABSTRACT

There are three main regional human rights tribunals (HRTs) in Africa, namely the African Commission, the African Court and the African Committee of Experts on the Rights and Welfare of the Child. In addition to these, there are political bodies within the African Union responsible for implementing human rights mandates as well as several sub-regional courts established for the primary purpose of adjudicating trade disputes and facilitating political integration which have issued notable human rights decisions and judgments. Accordingly, Africa is not lacking in human rights jurisprudence. What is lacking, however, is genuine commitment on the part of state actors to implement the decisions and judgments of the various human rights bodies. This article examines the factors responsible for slowing down the pace and rate of state compliance in Africa. It argues, among other things, that compliance with HRTs' decisions in Africa has been limited due to poor supervision mechanisms, weak domestic infrastructures, weak state institutions caused by 'strong men syndrome' and poor observance of the rule of law, poor institutional designs of regional and sub-regional HRTs, lack of awareness and erroneous perceptions about international human rights system, ineffective follow-up as well as a poor system of governance in many states in Africa among other factors. The article notes that attitudinal barriers and erroneous perceptions about international human rights system are central to the various barriers and thus adequate attention should be given to changing negative attitudes and perceptions among states actors and members of the public in the various African states.

Keywords: African Human Rights Tribunals, barriers, decisions, implementation, judgments, lessons learnt, state compliance

I. INTRODUCTION

Regional systems for the promotion and protection of human rights are important building blocks and pillars of the international human rights system. The adoption in 1945 of the United Nations (UN) Charter set in motion the process for the internationalisation of human rights. This was followed by the adoption in 1948 of the Universal Declaration of Human Rights (UDHR), which has been described as the centrepiece of international human rights law.[1] Article 52 of the UN Charter provides for the creation of 'regional arrangements or agencies', provided such arrangement are in line with the principles and purpose of the United Nations.[2] Pursuant to this provision, a number of regional arrangements have been put in place in Africa, Europe and the Americas.[3] There are also emerging systems in the Southeast Asia region and the Arab world.[4] While the provision of Article 52 of the UN

Charter relates mainly to regional intergovernmental organisations, the emergence of regional human rights mechanisms may be linked more directly to the regional and international efforts which followed the adoption of the UDHR. The strength of the regional human rights systems is that they generally are more accessible, offer relatively more effective institutional mechanisms for the protection of human rights, and provide regional perspectives to the development of international human rights norms and standards.[5]

The first legally binding regional human rights instrument was adopted in Europe.[6] On 4 November 1950, the Council of Europe adopted the Convention for Protection of Human Rights and Fundamental Freedoms (ECHR or the Convention).[7] The Convention, which entered into force on 3 September 1953, initially established two monitoring bodies – the European Commission of Human Rights and the European Court of Human Rights.[8] As at 2018, each of the three main inter-governmental organisations in Europe – the Council of Europe (CoE), the European Union (EU) and the Organisation for Security and Cooperation in Europe (OSCE) – has its own distinct human rights instruments and mechanisms.[9] However, the Council of Europe's instruments and mechanisms remain the most developed.[10] In the Americas, the Inter-American Commission on Human Rights (IACmHR) was established in 1959 as an autonomous organ of the Organisation of American States (OAS). This was followed in 1969 by the adoption of the American Convention on Human Rights (ACHR). The ACHR established the Inter-American Court of Human Rights and reinforced the existing role of the IACmHR.[11] There are fledgling regional human rights systems in the Southeast Asia and the Arab states.[12] However, as Viljoen argues, 'it is better to have a weak system in place than nothing at all'.[13]

This article focuses on the regional human rights tribunals in Africa. Africa currently has three main bodies that perform primarily the function of adjudicating human rights complaints at the continental level, namely: the African Commission on Human and Peoples' Rights (African Commission), the African Court on Human and Peoples' Rights (African Court) and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Rights Committee). Whereas two of these tribunals – the African Commission and the African Children's Rights Committee – are quasi-judicial in nature, the African Court has the full character and powers of a court.[14] While processes are ongoing to restructure the African human rights architecture through the establishment of a multi-chamber court, the Protocols containing these reforms are yet to enter into force.[15]

One interesting feature of the African human rights architecture is the existence of 'sub-regional trade courts' that in instances rely on regional human rights treaties for adjudicating individual complaints. Although there are several sub-regional judicial bodies in Africa, only three of them – the ECOWAS Community Court of Justice (ECCJ), the East African Court of Justice (EACJ) and the Tribunal of the Southern African Community (SADC Tribunal) – have decided significant human rights-related cases to be regarded as human rights tribunals (HRTs) in this article. Of the three sub-regional tribunals highlighted above, only the ECCJ has a clear and unlimited jurisdictional mandate to adjudicate human rights cases. The EACJ in recent years has assumed limited human rights jurisdiction in terms of Article 6 of the EAC Treaty. Notwithstanding the disbandment of the Tribunal and the 'proposed' closure of the Tribunal to private individuals, the obligations of member states of SADC to execute, implement and comply with all the existing decisions of the defunct SADC Tribunal remain active.

Against the above background, a three-year study was undertaken to investigate the status of state compliance with pertinent decisions of the listed HRTs.[16] The study focused on the broad issues of state compliance, factors influencing compliance with reparation orders of regional and sub-regional tribunals, and the influence or impact of such reparation orders in the selected African states. This article aims at summarising some of the main findings of the study with regard to challenges of HRTs in Africa and barriers to state compliance with decisions of African HRTs.

II. STATE COMPLIANCE, REPARATION ORDERS AND HUMAN RIGHTS TRIBUNALS

In this article, 'state compliance' is used to describe the conformity between state actions or factual situation at the domestic level on the one hand and a discrete obligation or reparation order prescribed in a judicial decision on the other.[17] Sometimes state compliance does not happen the same way 'a twist to the hand causes pain'.[18] More often than not, compliance is the result of coincidence, inadvertence or reasons extrinsic to a legal rule or reparation order of an HRT.[19] It must be noted that some scholars have argued that the focus on compliance tends to oversimplify the various ways through which international law can have effect at the domestic level.[20] 'Implementation' refers to the process of taking measures whether legislative, judicial or administrative to give effect to a legal rule or decision of an HRT.[21] Implementation is a *process* that leads to compliance. In other words, compliance is the end-point or end result of implementation. However, compliance can occur in the absence of implementation, and implementation can occur without leading to compliance.[22]

The word 'international tribunals' is used to describe all layers of post-national judicial institutions that involve at least two states. In other words, 'international' comprises global, regional and sub-regional arrangements. This definition aligns with the views of Viljoen arguing that 'from the perspective of the nation-state, the sub-regional, regional and the global tiers together comprises the international level.'[23] However, judicial bodies set up by the African continental body, the African Union (AU), and those set up by the respective regional economic communities (RECs) in Africa are regarded in this article as 'African regional tribunals'.

A tribunal is sometimes defined as a judicial body which renders legally binding decisions like domestic courts, but this type of narrow definition overlooks the fact that even the so-called 'courts' also exercise quasi-judicial mandates like giving advisory opinions and facilitating amicable settlement.[24] A broader definition has thus been suggested by scholars. Guzman, for example, defines a tribunal as 'a disinterested institution to which the parties have delegated some authority and that produces a statement about the facts of a case and opines on how those facts relate to relevant legal rules'.[25] Helfer and Slaughter define 'international tribunals' both as tribunals formally designated as 'courts' as well as 'less formal or permanent bodies established to resolve specific disputes or clusters of disputes'.[26] For the purpose of this article, 'regional human rights tribunals' refer to *both judicial and quasi-judicial bodies* that monitor the implementation of regional human rights treaties through inter-state or individual complaints procedures. The term is not limited to only those regional tribunals that have clear and unlimited human rights jurisdiction but also to those regional tribunals originally set up by RECs to adjudicate trade and regional integration disputes and have created significant though limited human rights jurisdiction for themselves. For the purpose of this article, 'Africa' or 'African states' refer to the 55 member states of the African Union.[27]

The term 'decision', on the one hand, is usually used in respect of quasi-judicial HRTs to describe the totality of the submissions, views, written observations or findings of the tribunal in respect of specific aspects of the case. Judgment, on the other hand, refers to the totality of written observations and submissions of a court or judicial HRT in respect of a case. A decision, also referred to as judgment, is the final articulation of a tribunal's reasoning in respect of a case.[28] It comprises the summary of facts of the case, procedure followed, evidence received, arguments of counsels, a summary of the legal issues and the tribunal's finding on each issue, and the reparation orders for the state to implement.[29] However, for the purpose of this article, both judgments and decisions of judicial and quasi-judicial tribunals are referred to simply as 'decisions'.

Decisions of HRTs usually contain one or more 'discrete obligations', 'discrete mandates' or recommendations which states are required to implement in order to redress the violations established against them.[30] These discrete obligations, mandates or recommendations are referred to in this article as 'reparation orders'. While it may be argued that discrete mandates imposed by quasi-judicial tribunals are more in the nature of 'recommendations', and discrete obligations imposed by judicial tribunals are more in the nature of 'orders', this article acknowledges this technical dichotomy. Nonetheless, for the purpose of methodological simplification, 'reparation order' is used to describe remedial obligations imposed on states by both judicial and quasi-judicial HRTs in Africa.

III. CHALLENGES OF REGIONAL HUMAN RIGHTS TRIBUNALS IN AFRICA

The single most important challenge facing regional HRTs in Africa is non-compliance by state parties with their decisions. In order for the HRTs to fulfil their mandate, there is a need for them to identify and address the barriers to state compliance. A study by Viljoen and Louw, which analysed the status of compliance with the recommendations of the African Commission in 44 communications as at 2004, found that only six (representing 14 per cent) of the 44 decisions have been fully complied with.[31] While there is debate over how to measure state compliance, there is consensus among scholars that the rate of state compliance with recommendations of the African Commission is generally low.[32] The African Court, established to address many of the failures of the African Commission by issuing legally binding decisions, has not been able to raise significantly the compliance profiles of African states.[33]

> The problem of non-compliance seems to be associated with the lack of political will by African heads of states as well as the political organs of the AU to enforce decisions of the various regional human rights bodies, and so the creation of additional bodies as the AU is fond of doing is not likely to solve the problem of states' non-compliance.

Another study carried out in 2013 by Adjolohoun found that 66 per cent of the merit decisions of the ECCJ have been fully complied with and implemented by states.[34] However, quite recently, the ECCJ has decried non-compliance with its decisions.[35] As the Court itself noted, 'enforcement is the major challenge because most of the member states have not designated their focal points for the enforcement of the decisions of the court.'[36] As at November 2021, only Burkina Faso, Ghana, Guinea, Mali, Nigeria and Togo have adopted mechanisms for implementing decisions of the ECCJ.[37] While the failure of some member states of ECOWAS to designate their focal points definitely has some consequences for state compliance, it must be noted that non-designation of focal points is not the only cause of state non-compliance. The fact that states which have designated their focal points

such as Nigeria still default in complying with judgments of the ECCJ demonstrates that perhaps that there are probably more serious issues at stake than the lack of focal points. Some of the challenges responsible for the poor rate of state compliance with decisions of regional HRTs in Africa are identified below.

A. Poor Coordination

Lack of effective coordination is a principal challenge facing HRTs in Africa. There is very limited coordination among the various HRTs and this is evident at both regional and sub-regional levels. At the regional level, there is an apparent lack of coordination among the three main regional HRTs – the African Commission, the African Court and the African Children's Rights Committee. In terms of an Advisory Opinion given by the African Court, the African Children's Rights Committee may not refer cases to the African Court.[38] This decision left many people wondering why the drafters of the African Court Protocol did not anticipate any relationship between the protective mandates of the African Children's Rights Committee and that of the African Court.

With regard to the promotion and protection of human rights, there is inadequate coordination among the various organs of the AU such as the AU Assembly, the Executive Council, the Pan African Parliament (PAP), the Peace and Security Council (PSC), the Permanent Representatives Committee (PRC) and the AU Commission. Thankfully, the African Human Rights Strategy now designates the African Governance Architecture (AGA) as the primary AU institution with the primary mandate to coordinate the human rights programmes of the AU.[39] The downside is that the Human Rights Strategy does not provide concrete arrangements for the coordination of follow-up and the implementation of decisions of HRTs in Africa.

There is also very limited coordination among the three main regional human rights tribunals in Africa, on the one hand, and the various sub-regional tribunals, on the other hand. An attempt has been made to fill this gap through the proposed African Court of Justice and Human and Peoples' Rights. The proposed African Court, when formally established, will have competence to receive appeals from courts of RECs.[40] However, the treaties setting up tribunals of RECs do not envisage such an appellate system. According to their founding treaties, decisions of each of the sub-regional tribunals are final and not appealable to any other regional tribunals.

The three tribunals that exercise full human rights jurisdiction in Africa – the African Court, the African Commission and the ECOWAS Court of Justice – interpret the African Charter, yet there is no formal agreement as to which of the three tribunals has primary responsibility for interpreting the provisions of the Charter. In principle, it would seem the African Court has overriding competence for the interpretation of the African Charter. As argued by Viljoen, one of the fundamental consequences of the complementarity between the African Court and the African Commission is that the Court can 'overrule' the Commission.[41] What happens if the Commission or a sub-regional court decides to deviate from the interpretation of the African Charter by the African Court? The lack of clarity on the hierarchy of competing interpretive competences of regional and sub-regional tribunal is one challenge that has implications for the harmonious relationships of African HRTs in the future.

The normative dimension of the problem of lack of coordination is the absence of a common standard for the promotion and protection of human rights by the major regional and sub-

regional HRTs. With the exception of the Protocol establishing the SADC Tribunal, the legal instruments setting up sub-regional courts in Africa recognised the promotion and protection of human rights on the basis of the African Charter as part of the fundamental principle or objective of the respective regional economic communities (RECs).[42] The ECCJ is the only sub-regional court in 2018 which exercises full human rights jurisdiction on the basis of the African Charter. The EACJ is yet to assume full human rights jurisdiction in terms of the African Charter. Thankfully, the Appellate Division of the EACJ in the *Democratic Party* case has held that the EACJ has jurisdiction to ensure adherence to the African Charter and its supplementary Protocols.[43] The human rights jurisdiction and jurisprudence of the now defunct SADC Tribunal are not linked to the African Charter.[44]

B. Jurisdictional Overlaps

The African Court was established to complement the protective mandate of the African Commission. This implies that the African Commission still retains almost exclusive control over the promotion of human and peoples' rights in terms of the African Charter. Some writers have suggested that the African Commission should surrender its protective mandate to the African Court, thus allowing the Commission to focus on promotional activities.[45] As Viljoen has argued, this suggestion is premature.[46] As of 25 March 2022, only 33 out of 54 AU member states have ratified the Protocol setting up the African Court, and only ten states have made the Article 34(6) declaration which allows individual access to the Court, and four of these ten states have withdrawn their Special Declarations.[47] As a result, the protective mandate of the African Commission is the only complaint mechanisms available under the African Charter for individuals in the states that are yet to ratify the Court's Protocol. Also, individuals in the states that have ratified the Protocol but have not made the Article 34(6) declaration need to first invoke the Commission's protective mandate before their grievances can be heard by the Court.

The bottom line is that the protective mandate of the African Commission remains at the heart of the African human rights protection system. A communication submitted to the African Commission may be referred to the African Court by the Commission even before the Commission makes a ruling on admissibility.[48] This is one way the 'case referral mechanism' can be used to prevent unnecessary duplication of duties between the Commission and the Court. Another potential duplication of duty is the mandate of the African Commission to interpret the African Charter through advisory opinions.[49] The Court, also under Article 4 of its Protocol, has advisory opinion jurisdiction. While the Commission's jurisdiction with regard to giving advisory opinion is limited to the African Charter, the African Court may offer advisory opinion on the African Charter and other relevant human rights instruments.[50] The fact that the African Court is forbidden from giving an opinion on any matter pending before the African Commission is an internal mechanism that checks unnecessary duplication of functions between the Court and the Commission. However, the Protocol setting up the Court fails to clarify whether the Court may accept a request for advisory opinion the subject matter of which has been determined by the African Commission. Obviously, the admissibility requirement under Article 56(7) of the African Charter is inapplicable to resolve the potential duplication of duties that this type of situation may give rise to.

In certain cases, the jurisdiction of regional and sub-regional tribunals overlaps. The recurring question has been at what point does the decision of a sub-regional court create *res judicata* effect on the jurisdiction of a regional court and vice versa? This question is very important

because the decisions of these tribunals on the same subject matter are seldom made on the basis of the same treaty. While regional HRTs rely on the African Charter and other AU human rights treaties, sub-regional courts more often than not rely on their founding treaties. Can an unsuccessful party before a sub-regional tribunal subsequently approach a regional tribunal? This may not be possible. The treaties setting up the various regional tribunals in African prohibit them from accepting complaints that have been 'settled' by any judicial mechanism of a supranational nature recognised by the UN or the AU.[51]

Can an unsuccessful party before a regional tribunal subsequently approach any of the sub-regional tribunals over the same dispute? On the basis of the principle of *res judicata*, the answer to this is 'no'.[52] Can a litigant simultaneously litigate the same matter before a regional human rights tribunal and a sub-regional court? The answer to this will depend on a number of factors such as the provisions of the treaties setting up the various HRTs. For instance, the subject matter of the *Yogogombaye* case decided by the African Court was simultaneously ligated before the ECOWAS Court in the *Hissène Habré* case.[53] When conflicting decisions result from these proceedings, it is not clear how litigants and states will respond.

C. The Problem of Forum Shopping

Forum shopping, which literally means choosing from multiple forums, is the practice whereby litigants submit their legal disputes to courts they believe would produce the most favourable judgment. The practice may lead to a dearth of cases in one tribunal and the overload of cases in another. This is one major challenge that regional and sub-regional HRTs selected for this study will have to contend with as they develop their jurisprudence. Viljoen argues that litigants' choice of forum is influenced by a cluster of factors including the type of provision litigants are seeking to enforce, the likelihood of success drawing from the tribunal's previous jurisprudence, and the legal effect of the decision of the tribunal.[54] In addition to the three factors identified by Viljoen, one primary logistical factor that influences litigants to choose one international tribunal over another is accessibility. Tribunals that are geographically proximate to litigants generally have higher usage rate. This, to some extent, explains the surge of cases against the Republic of Tanzania and other countries soon after they made the Article 34(6) Special Declaration.

Accessibility of an international human rights tribunal may also be understood in terms of the criteria for submitting complaints to the tribunal. A tribunal with flexible admissibility criteria may have high usage rate than those with very stringent accessibility criteria. This factor perhaps explains why the ECOWAS Court of Justice, which has no requirement for the exhaustion of domestic remedies, has been inundated with cases in recent years.[55] Dealing with dearth of cases in one tribunal and overflow in another tribunal is one challenge the selected regional and sub-regional HRTs will have to face sooner rather than later.

D. Hostile Responses from Government Officials

The African Commission is no stranger to backlashes and hostile responses from state representatives and government delegations. On a number of occasions, state representatives have mounted high-level resistance to the adoption of reports containing decisions of the Commission which the government found to be offensive or embarrassing. In 2004, the African Commission submitted its 17th Activity Report to the AU Assembly for adoption as required in terms of Article 59 of the African Charter. The 17th Activity Report contained the

final report of an on-site mission to Zimbabwe in which the Commission presented damning allegations of human rights violations against the government.[56] When the Activity Report was tabled for adoption at the 3rd ordinary session of the AU Assembly in 2004, the government of Zimbabwe raised objections that it had not had prior access to the mission report and was not given an opportunity to respond to it. Acting on Zimbabwe's objections, the AU Assembly suspended the publication of the entire 17th Activity Report of the Commission until the comments of the government of Zimbabwe were attached to the mission report.[57]

In 2005, the governments of Ethiopia, Eritrea, Zimbabwe, Uganda and the Sudan teamed up to block the adoption of the African Commission's 19th Activity Report. They alleged that the Commission publicised those resolutions prior to their adoption by the relevant AU organs. As a result, the Executive Council of the AU in its decision requested the African Commission to expunge the affected resolutions from its Activity Report until the states concerned responded to the resolutions.[58] Drawing from these experiences, the Executive Council has made a rule curtailing the Commission's freedom to publish the report of its mission without first seeking the government's inputs and comments.[59]

On another occasion, the government of Zimbabwe, during the presentation of the African Commission's 20th Activity Report to the AU Executive Council, objected to the publication of the Commission's decision in *Zimbabwe Human Rights NGO Forum* v. *Zimbabwe.*[60] As a consequence, the AU Executive Council refused to approve the decision for publication until the decision was formally communicated to the government of Zimbabwe and the government was given three months within which to provide its response to it.[61] Also in 2005, the AU Commission requested the African Commission's Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons, Commissioner Nyanduga, to undertake a fact-finding mission to Zimbabwe between 30 June and 4 July 2005.[62] The Special Rapporteur travelled to Zimbabwe on 5 June 2005 but on the following day, the Ministry of Foreign Affairs of Zimbabwe ordered the Special Rapporteur to leave the country.[63]

Following the decision of the African Commission in *Good* v. *Botswana*,[64] the government of Botswana stated unequivocally through a Diplomatic Note that 'the Government has made its position clear; that it is not bound by the decision of the Commission.'[65] In the case of *International Pen and Others (on behalf of Ken Saro-Wiwa)* v. *Nigeria*,[66] the African Commission issued a provisional measure requesting the government of Nigeria to suspend the execution of the 'Ogoni nine' pending the determination of their complaints before the Commission. The request was ignored and the government, as if asking the Commission to do its worst, proceeded with haste to execute all the nine applicants.[67] These are only a handful of cases where states have challenged the authority of the African Commission and actually backed up their positions with hostile measures.

The African Court and the African Children's Committee have not faced any significant political backlash from states. The complaint procedures of the two bodies is at its infancy when compared with the more developed procedure and jurisprudence of the African Commission. One instance of a backlash that comes readily to mind in the case of the African Court is the March 2016 decision of the government of Rwanda to withdraw its Article 34(6) declaration following series of lawsuits filed against the state by private litigants.[68]

More political backlash has been experienced by sub-regional tribunals in Africa. Attempts by the ECCJ, the EACJ and the SADC Tribunal to invest in themselves human rights jurisdiction through creative interpretation of their founding treaties attracted hostile reactions from states. Alter, Gathii and Helfer chronicled three backlash attempts against sub-regional tribunals in Africa.[69] One of the attempts succeeded, another failed while the third was redirected.[70] As a result of the various rulings of the SADC Tribunal against the government of Zimbabwe, especially the *Campbell* decisions, the government of Zimbabwe mounted a campaign that resulted ultimately in the suspension of the Tribunal and the abolition of access rights for private litigants.[71]

In East Africa, the government of Kenya sought to abolish the East African Court of Justice following a ruling of the Court in the case of *Anyang Nyong'o* v. *Attorney General of Kenya* challenging the election of a Kenya national into the East African Legislative Assembly.[72] While Kenya's initial proposal failed, it succeeded in securing a revision of the EAC Treaty. The amended Treaty introduced an appellate chamber, added a new ground for the removal of judges, restricted the court's material jurisdiction and imposed a limitation period for private litigants intending to submit complaints to the EACJ.[73]

Following unfavourable judgments of the ECOWAS Court of Justice in the cases of *Ebrima Manneh* v. *The Gambia* and *Musa Saidykhan* v. *The Gambia*, the government of the Gambia responded by submitting a proposal to the ECOWAS Commission seeking to amend the 2005 ECOWAS Supplementary Protocol. The text of the proposed amendment included provisions that would scale down the powers and jurisdiction of the Court, create an appellate chamber and introduce additional admissibility criteria.[74] The proposed amendment was rejected unanimously by a Committee of Legal Experts convened to review and discuss the proposal.[75] The Committee's position was subsequently endorsed by the ECOWAS Council of Justice Ministers. The Gambian backlash, instead of resulting in a sweeping erosion of the ECOWAS Court's jurisdiction, led ultimately to the adoption of even more stringent rules for the enforcement of the decisions of the Court in 2012. The failure of the Gambian backlash has been attributed to effective civil society mobilisation as well as information sharing and indirect coalition building by the ECOWAS Commission.[76]

E. Inadequate Funding

A paucity of funds is another major challenge impeding the work of the selected regional and sub-regional HRTs. The resources at the disposal of these tribunals are seldom enough to implement their mandates. Even if it is a resource-constrained world, judicial institutions still need to be well resourced in order to perform optimally. Viljoen identified inadequate support and meagre resource allocation from the AU as one of the seven challenges facing the African Court.[77] As at the time of writing, the African Children's Rights Committee is grossly under-resourced with no functional secretariat of its own.[78] For instance, the Committee's budget for the year 2016 stood at US$739,178.[79] The Committee ranks fourth among the AU institutions with the least budgetary allocation.[80] The African Commission is no exception. The Commission's secretariat has always been under resourced.[81] Despite its numerous promotional activities, the African Commission's budget for the financial year 2016 stood at US$5,581,245, a lot less than the allocation to the African Court which was US$10,286,401 for the same financial year.[82] The Commission relies largely on funds and support from external donors for many of its activities.

The ECCJ has consistently lamented the paucity of funds available for its operations.[83] The Court also expressed concerns about being short-changed in the disbursement of funds by the ECOWAS Commission. This is in addition to the problem of inadequate office space which successive Presidents of the Court have flagged. The EACJ has recently reported that it faces 'crippling challenges' including 'budgetary constraints', 'lean staff' and 'undetermined terms and conditions of service for Judges'.[84] In response to the problem of inadequate funding, the African Commission has called on AU political organs to set up a 'Voluntary Contribution Funds for African Human Rights Institutions'.[85] As at July 2017, this Fund has not been created.

IV. BARRIERS TO STATE COMPLIANCE IN AFRICA

A lot has been written on the problems of the African human rights system and the cause of the widespread non-compliance by states.[86] For example, Ayinla and Wachira, in their study of the implementation of the recommendations of the African Commission, provided a number of explanations for the poor rate of compliance by African states which include:

> the lack of political will on the part of state parties, a lack of good governance, outdated concepts of sovereignty, a lack of an institutionalised follow-up mechanism for ensuring the implementation of its recommendations, weak powers of investigation and enforcement and the non-binding character of the Commission's recommendations, the last of which is the most cited reason why states have not been inclined to enforce its recommendations.[87]

The question was put to respondents selected for this study to identify hindrances to state compliance with reparation orders of the HRTs in Africa, and similar sentiments were expressed by the respondents. Five main barriers to implementation and compliance with HRTs' decisions in Africa were identified, namely: ineffective supervision mechanisms, weak domestic infrastructures, weak state institutions, poor institutional designs of HRTs and poor system of governance.[88] Attitude barriers, including negative perceptions about the role and importance of international protection of human rights, were identified as the underlying cause of the various barriers to compliance and influence of HRTs' decisions. The following sub-sections examine these barriers and hindrances to state compliance in greater detail.

A. Ineffective Supervision Mechanisms

One of the often cited hindrances to human rights judgment compliance in Africa is the general weakness of the enforcement mechanisms of regional and sub-regional HRTs. It is usually assumed that states will comply in good faith with recommendations and orders of the selected HRTs, especially the African Commission and the African Children's Rights Committee. This explains why there is usually no developed framework regulating enforcement and lack of explicit powers for HRTs to enforce compliance with their decisions. So far, mechanisms for monitoring the implementation of decisions of the selected HRTs have been largely judicial and administrative rather than political.

The African Court, for instance, plays a facilitating role in the process of implementation of its judgments.[89] The Court transmits its judgment to the relevant state, clarifies its orders on a request from the state, and notifies the relevant organs of the AU on the status of compliance.[90] The Court has been reporting non-compliance to the relevant AU organs through its annual reports and follow-up letters. The AU Executive Council has the mandate to monitor execution of the Court's judgments on behalf of the AU Assembly.[91] There is no

indication the Executive Council takes any further steps to monitor implementation after receiving the compliance report from the Court.[92] Several highly respected writers and commentators have described the implementation mechanisms of the African Charter in relation to the African Commission as the least developed among the three main regional human rights system, woefully deficient, weak, ineffectual and dysfunctional.[93] None of the HRTs in Africa has a functional monitoring body similar to the Committee of Ministers of the Council of Europe and the Department for the Execution of Judgments of the European Court of Human Rights. Even though some political bodies exist within the AU with similar mandate, none of these bodies could be regarded as 'functional' in relation to monitoring execution of decisions and judgments of the relevant HRTs.

B. Weak Domestic Infrastructures

A fundamental principle of international human rights law is that states have the primary responsibility to implement decisions of HRTs.[94] Thus, while effective supervision at the supranational level matters for state compliance, what matters even more is the existence of implementing infrastructures at the domestic level. Domestic infrastructures for human rights judgment implementation are not only institutional in nature but also legal and political. Thus, in addition to creating institutions for human rights judgment compliance, there is a need to enact laws, adopt rules of procedures and guidelines, and create a domestic political climate supportive of international institutions, particularly HRTs. Although every branch and level of government bears the responsibility for state compliance, actual implementation rests on specific institutions within the state.[95] Some of the institutions typically implicated in the process of implementation include government ministries, departments and agencies, parliament, the judiciary and NHRIs. The challenge for states therefore is to institutionalise the involvement of the various institutions and actors.[96]

At the time of writing, decisions of regional and sub-regional HRTs are channelled to the selected states through the Ministry of Foreign Affairs or the Ministry of Justice.[97] In the Gambia, Nigeria and Zimbabwe, the national 'focal point' responsible for carrying out international human rights obligations, including liaising with HRTs, is the Ministry of Justice.[98] In Uganda, the national 'focal point' is the Ministry of Foreign Affairs[99] while in Tanzania, it is the Ministry for Constitutional and Legal Affairs and the Division of Constitutional Affairs and Human Rights in the Attorney General's Chambers.[100] The national focal points usually liaise with the relevant state institution whose mandate touches on the subject matter of the decision. The problem with this approach is that the implementation process is ad hoc, fragmented and lacks proper coordination. The national focal point also usually lacks a well defined mandate for judgment implementation and the mechanisms are rarely well funded.[101] The ECCJ, for example, has requested states appoint competent national authorities for receiving and enforcing a writ of execution from the Court.[102] As at November 2021, only Burkina Faso, Ghana, Guinea, Mali, Nigeria and Togo have adopted mechanisms for implementing decisions of the ECCJ.[103] The Gambia and other ten countries are at various levels of compliance.

Apart from the limited mechanisms situated within the Ministries of Justice, Foreign Affairs and the Attorney General's Office, which are mostly poorly resourced, badly staffed and politically feeble,[104] there is no dedicated body in parliament, judiciary or even the responsible ministry for supervising the implementation of HRTs' decisions in the selected states. There is no procedural requirement to inform parliament of adverse decisions of HRTs in the five selected states. There is also a lack of 'formalised channels of communication' not

only among the three branches of government but also within government ministries, departments and agencies in matters relating to the implementation of human rights decisions. At least six parliaments in Europe, namely those of Croatia, Finland, Hungary, Romania, Ukraine and the United Kingdom have established special mechanisms for supervising the implementation of judgments of the European Court of Human Rights.[105] Similarly, twelve states in Europe have special procedures for informing parliament about an adverse decision by the European Court.[106] In the Netherlands, it is obligatory for the parliament to be briefed not only about adverse judgments against the Netherlands but also those against other countries.[107]

National human rights institutions (NHRIs) in the five selected states currently play little or no role in the implementation of decisions of the selected HRTs.[108] This is unfortunate as NHRIs could provide a form of nationally institutionalised pressure on executive actions.[109] The involvement of NHRIs and parliament in the process of implementation could increase 'pressure for compliance at the domestic political level'.[110] The absence of dedicated domestic implementation mechanisms in the selected states makes follow-up very difficult because institutional memory is not preserved. With a designated implementing authority in each ministry including parliament and the judiciary, any time there is a decision against a state, the judgment will simply be forwarded to the implementing authority, and follow-up also can be done through the mechanism.

C. Weak Institutions

It is easy to put the blame for states' poor compliance records at the feet of the ministry of justice or any other government department that acts as a focal point for implementation. The truth is many government institutions and non-state organisations, from parliament, judiciary, police, intelligence agencies, electoral bodies, anti-corruption agencies, NGOs and some lesser known establishments, are implicated in human rights judgment implementation in Africa, depending on the issues involved in the case. The capacity and independence of these institutions is crucial for state compliance.

African states mostly have strong individuals and weak institutions. The efficiency and effectiveness of many institutions in many African states are usually linked to certain individuals, not the existence of protocols, rules or systems. The absence of strong and independent institutions make politics rather than principles the basis of state actions including in the areas of human rights judgment compliance. Most state institutions are tied to the apron-strings of powerful individuals who decide what ought to be done based on what is favourable to them. The failure of many states in Africa consistently to observe the rule of law make institutions weak, thus constituting a barrier to human rights judgment compliance. When state institutions such as the parliament, the court system, electoral bodies and anti-corruption agencies are weak, accountability is low, and so political actors are able to defy the orders of national and international tribunals with impunity. A recent study of nine member states of the Council of Europe (CoE) finds a direct correlation between state compliance and government effectiveness, defined as 'the capacity of state institutions to coordinate and formulate policies in a timely manner'.[111]

Weak state institutions are responsible in certain cases for the lack of political transition, lack of political will and lack of commitment to comply with HRTs' decisions in Africa. The 'big man syndrome' implies that the political, judicial, electoral and other systems operate at the discretion of the President and a few powerful individuals. They appoint members of the

electoral body, constitute the courts and control law enforcement and sometimes even the media. The surprise political transitions in the Gambia and Zimbabwe in 2017 proves that the people, when they stand united and receive the support of relevant international actors, can break the syndrome of strong individuals and weak institutions. However, real victory over the problem of weak institutions and the 'big man syndrome' in Africa is not the removal of one or more sit-tight leaders but ensuring that new political demagogues do not emerge.

D. Poor Institutional Designs of some HRTs

It will be recalled that there were debates initially about the competence of the African Commission to take on individual communications.[112] This debate was due largely to the poor drafting of Article 55 of the African Charter relating to 'other communications'. This lack of clarity about the competence of the African Commission to handle individual communications provided some states with flimsy excuses to justify their non-compliance.[113] The Article 55 debate is also further complicated by the non-binding or recommendatory nature of the Commission's findings. Even the Commission itself has not been consistent regarding its approach on the legal status of its decisions.[114] For instance, the Commission has described its mandate as follows: 'the mandate of the Commission is quasi-judicial and as such, its final recommendations are not in themselves legally binding on the States concerned'.[115] There is no question the non-binding nature of the Commission's findings will continue to affect the perception of states towards its decisions thus constituting a major obstacle to compliance.[116]

In a number of cases, some states have expressed disagreement on these grounds with decisions of the selected HRTs, particularly the African Commission. Following the decision of the African Commission in *Good* v. *Botswana*,[117] the government of Botswana stated unequivocally through a Diplomatic Note that: 'The Government has made its position clear, that it is not bound by the decision of the Commission.'[118] The existence of specific provisions making decisions of HRTs binding takes away an important and plausible rationale for non-compliance. Governments can no longer simply say that they will not comply because they are not bound to do so. This makes it harder to justify their non-compliance.

E. Other Barriers to State Compliance

Other barriers to state compliance include the unspecificity of reparation orders of HRTs.[119] Clarity and specificity of reparation orders enable governments to know exactly what is needed to remedy the situation. Lack of awareness about international human rights system is also a possible hindrance to state compliance with decisions of HRTs in Africa. Ignorance about the decisions of HRTs is also worsened by widespread poverty and illiteracy in Africa. Poverty and illiteracy affects the capacity of members of various communities in whose favour HRTs have ruled to effectively follow-up on the decisions. Ineffectiveness of follow-up by HRTs and NGOs is also a possible barrier to state compliance. Non-domestication of regional human rights treaties by a large number of African states and perceptions about monism and dualism are also barriers which impact negatively on state compliance and the overall impact of HRTs' decisions in Africa.

V. CONCLUSION

This article discusses five main challenges of regional and sub-regional HRTs in Africa and identifies five hindrances to state compliance with HRTs' decisions in Africa. The article argues that, notwithstanding the proliferation on the African continent of bodies with a human rights mandate, the AU is yet to adequately mainstream human rights into its processes and programmes. This results in a lack of coordination and collaboration among the various AU organs, avoidable jurisdictional overlaps as well as duplication of functions and also the problem of limited capacity of, and limited access to, the various human rights-protecting institutions. The author, however, notes that while the AU Human Rights Strategy has not solved most of these problems, the Strategy remains one of the clearest policy documents from a major AU organ aimed at addressing the problems.

In summary, the article argues that state compliance with HRTs' decisions in Africa has been limited as a result of poor supervision mechanisms, weak domestic infrastructures, weak state institutions caused by 'strong men syndrome' and poor observance of the rule of law, poor institutional designs of regional and sub-regional HRTs, lack of awareness and erroneous perceptions about international human rights system, ineffective follow-up, and poor system of governance in many states in Africa, among others. Identification of the barriers to state compliance and the impact of HRTs' decisions is crucial in order to identify where gaps exit and the actions required to fill those gaps. Importantly, attitudinal barriers and erroneous perceptions about the international human rights system are central to the various barriers highlighted above. This finding has important implications for politics and policies aimed at improving state compliance. While improvement of state compliance requires taking actual steps and devising policies and strategies, adequate attention should also be given to changing negative attitudes and perceptions about international protection of human rights.

Notes

1 See generally G. W. Mugwanya, 'Realizing Universal Human Rights Norms through Regional Human Rights Mechanisms: Reinvigorating the African System', 10 (1) *Indiana International and Comparative Law Review* (1999) 35– 50, at 35.

2 T. Maluwa, 'International Law-Making in the Organisation of African Unity: An Overview', 12 *African Journal of International and Comparative Law* (2000) 201–25, at 201.

3 Mugwanya, *supra*, note 1, 40.

4 *Ibid*. For a schematic comparison of the three regional human rights systems, see C. Heyns, D. Padilla and L. Zwaak, 'A Schematic Comparison of the Regional Human Rights Systems', in F. G. Isa and K. D. Feyter (eds), *International Protection of Human Rights: Achievements and Challenges* (Humanitarian Net, University of Deusto 2006) 545.

5 See C. Heyns, D. Padilla and L. Zwaak, 'A Schematic Comparison of the Regional Human Rights Systems: An Update', 4 (3) *SUR – International Journal on Human Rights* (2006) 162–71, at 163.

6 See J. W. Hart, 'The European Human Rights System', 102 (4) *Law Library Journal* (2010) 532–59, at 537 (arguing that the ECHR is the first legally binding human rights treaty).

7 E. Neamtu, 'The European System for Human Rights Protection', 1 (1) *Juridical Sciences Series* (2008) 142, at 142.

8 By Protocol 11 of 1998, the European Commission of Human Rights was abolished. See Hart, *supra*, note 6.

9 Office of the High Commissioner for Human Rights, *Regional Human Rights Systems in Other Parts of the World: Europe, the Americas and Africa*, available at <http://bangkok.ohchr.org/programme/other-regional-systems.aspx> (accessed 13 June 2022); Council of Europe, *Human Rights*, available at <http://www.coe.int/en/web/portal/organisation> (accessed 13 June 2022); European Union, *EU Institutions and Other Bodies*, available at <https://europa.eu/european-union/about-eu/institutions-bodies_en> (22 June 2022); Organisation for Security and Cooperation in Europe (OSCE), *OSCE Office for Democratic Institutions and Human Rights*, available at <http://www.osce.org/odihr> (accessed 22 June 2022).

10 *Ibid*.

11 A. A. C. Trindade, 'The Inter-American System of Protection of Human Rights: The Developing Case-Law of the Inter-American Court of Human Rights (1982–2005)', in F. G. Isa and K. de Feyter (eds), *International Protection of Human Rights: Achievements and Challenges* (Humanitarian Net, University of Deusto 2006) 475–506, at 475.

12 F. Viljoen, *International Human Rights Law in Africa* (Oxford University Press 2012) at 12.

13 Viljoen, *supra*, note 12, at 15.

14 As at January 2022, processes are ongoing to restructure the African human rights architecture through the establishment of a multi-chamber court; however, the Protocols containing these reforms are yet to enter into force.

15 See the AU Protocol on the Statute of the African Court of Justice and Human Rights was adopted on 1 July 2008. The Protocol seeks to merge the African Court of Justice with the African Court on Human and Peoples' Rights. While waiting for the Protocol on the Statute of the African Court of Justice and Human Rights to enter into force, the AU on 27 June 2014 adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol). The Malabo Protocol in essence changed the name of the African Court of Justice and Human Rights to 'African Court of Justice and Human and Peoples' Rights' and extended the jurisdiction of the Court to include international crimes.

16 The study was conducted as part of a doctoral programme undertaken from 2015 to 2018 at the Centre for Human Rights, University of Pretoria, South Africa. The study also gained insights from the ESRC Human Rights Law Implementation Project (HRLIP) under which the author was a Research Associate for Africa.

17 This type of compliance is described in this study as 'full compliance'. Other categories of compliance used in this study include partial compliance.

18 O. C. Okafor, *The African Human Rights System: Activist Forces and International Institutions* (Cambridge University Press 2007) at 116–17.

19 K. Raustiala, 'Compliance and Effectiveness in International Regulatory Cooperation', 32 (3) *Case Western Reserve Journal of International Law* (2000) 387–440, at 391–2.

20 R. Howse and R. Teitel, 'Beyond Compliance: Rethinking Why International Law Really Matters?', 1 (2) *Global Policy* (2000) 127–36, at 127; J. L. Cavallaro and S. E. Brewer, 'Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court', 102 (4) *American Journal of International Law* (2008) 768–827, at 768; A. Huneeus, 'International Criminal Law by Other Means: The Quasi-Criminal Jurisdiction of the Human Rights Courts', 107 (1) *American Journal of International Law* (2013) 1–44, at 1. See also O. C. Okafor, *supra*, note 18, 43 and 49.

21 See M. Burgstaller, *Theories of Compliance with International Law* (Martinus Nijhoff 2004) 4.

22 See K. Raustiala, *supra*, note 19, at 392. Raustiala referred to the international whaling treaties and the Treaty on Non-Proliferation of Nuclear Weapons (1968) which codified current state practice or what states are already doing.

23 Viljoen, *supra*, note 12, at 9.

24 See A. T. Guzman, 'International Tribunals: A Rational Choice Analysis', 157 *University of Pennsylvania Law Review* (2008) 171–235, at 185.

25 *Ibid*.

26 L. R. Helfer and A. M. Slaughter, 'Toward a Theory of Effective Supranational Adjudication', 107 *Yale Law Journal* (1997) 273–391, at 285.

27 Morocco rejoined the AU in January 2017 following a vote by a majority of AU member states to readmit Morocco. See C. Gaffey, 'Why Has Morocco Re-joined the African Union after 33 Years?' *Newsweek*, 2 February 2017, available at <http://www.newsweek.com/morocco-african-union-western-sahara-551783> (accessed 22 June 2022).

28 In the practice of the HRC, the term 'view' is used instead of decision. See L. Louw, 'An Analysis of State Compliance with the Recommendations of the African Commission on Human and Peoples' Rights', Unpublished LLD Thesis, University of Pretoria, 2005, at 9.

29 See Louw, *supra*, note 28, at 9. 'Findings' relate to the concluding part of the decisions of a quasi-judicial tribunal while 'rulings' is the concluding part of the judgment of a court. It must be noted that the term 'ruling' may also be used to describe the submission of a court in respect of a preliminary or interlocutory issue.

30 See C. Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (Cambridge University Press 2014) 3; D. Hawkins and W. Jacoby, 'Partial Compliance: Comparison of the European and Inter-American Courts of Human Rights', 6 *Journal of International Law and International Relations* (2010– 11) 35–85, at 35.

31 F. Viljoen and L. Louw, 'State Compliance with the Recommendations of the African Commission on Human and People's Rights, 1994–2004', 101 *American Journal of International Law* (2007) 1–34, at 4–5; Louw, *supra*, note 28, at 61.

32 Open Society Justice Initiative, *From Judgment to Justice: Implementing International and Regional Human Rights Decisions* (Open Society Foundations 2010) 95.

33 See generally Coalition for an Effective African Court on Human and Peoples' Rights, *Booklet on the Implementation of Decisions of the African Court on Human and Peoples' Rights* (Coalition for an Effective African Court on Human and Peoples' Rights 2017) 1–30.

34 H. S. Adjolohoun, 'Giving Effect to the Human Rights Jurisprudence of the Court of Justice of the Economic Community of West African States: Compliance and Influence', Unpublished LLD Thesis, University of Pretoria, 2013, vi.

35 See K. J. Alter, L. R. Helfer and J. R. McAllister, 'A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice', 107 *American Journal of International Law* (2013) 739–79, at 746. For earlier suggestions on how to secure compliance with judgments of the ECCJ, see K. O. Kufuor, 'Securing Compliance with the Judgments of the ECOWAS Court of Justice', 8 *African Journal of International and Comparative Law* (1996) 1–11, at 4.

36 AllAfrica, 'West Africa: Court President Calls on Ministers Responsible for Regional Integration to Facilitate Implementation of Its Decisions', available at <https://allafrica.com/stories/201505191500.html> (accessed 22 June 2022).

37 W. Odunsi, 'ECOWAS Court Condemns Countries' Protocol Shun, Low Compliance with Judgments', *Daily Post*, 1 November 2021, available at <https://dailypost.ng/2021/11/01/ecowas-court-condemns-countries-protocol-shun-low-compliance-with-judgments/> (accessed 22 June 2022).

38 See Request No. 002/2013 – The African Committee of Experts on the Rights and Welfare of the Child on the Standing of the African Committee of Experts on the Rights and Welfare of the Child before the African Court on Human and Peoples' Rights. The African Court has also recently held in a request submitted by SERAP that, in relation to NGOs, only Africa-based NGOs duly accredited by the AU are competent to submit requests for advisory opinion to the Court. See Request for Advisory Opinion by the Socio-Economic Rights and Accountability Project (SERAP), Request No. 001/2013 (Advisory Opinion, 26 May 2017). Similar conclusions were reached in relation to NGOs in Request for Advisory Opinion by the Centre for Human Rights of the University of Pretoria and the Coalition of African Lesbians, Request No. 002/2015 (Advisory Opinion, 28 September 2017).

39 Department of Political Affairs, African Union Commission, 'African Human Rights Strategy', available at <https://au.int/sites/default/files/documents/30179-doc-hrsa-final-table_en3.pdf> (accessed 22 June 2022) para. 31.

40 Protocol on the Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, adopted by the AU Assembly at its twenty-third ordinary session, held in Malabo, Equatorial Guinea, on 27 June 2014 (the Malabo Protocol), Article 3(2).

41 Viljoen, *supra*, note 12, 425.

42 *Ibid*.

43 See *Democratic Party* v. *The Secretary General of the EAC and others*, Appeal No. 1 of 2014 (*The Democratic Party* Appeal case) para. 79.

44 See S. T. Ebobrah, 'Tackling Threats to the Existence of the SADC Tribunal: A Critique of Perilously Ambiguous Provisions in the SADC Treaty and the Protocol on the SADC Tribunal', 4 *Malawi Law Journal* (2010) 199–211, at 211.

45 M. Mutua, 'The African Human Rights Court: A Two-Legged Stool?' 21 *Human Rights Quarterly* (1999) 342–63, at 360–1; V. O. O. Nmehielle, *The African Human Rights System: Its Laws, Practice and Institutions* (Martinus Nijhoff 2001) 307.

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48 Rules of Procedure of the African Commission 2010, Rule 118(1)–(4). See also Viljoen, *supra*, note 12, at 425.

49 African Charter, Article 45(3).

50 African Court Protocol, Article 4.

51 African Charter, Article 56(7); African Court Protocol, Article 6(2).

52 See Viljoen, *supra*, note 12, at 454.

53 *Ibid*.

54 Viljoen, *supra*, note 12, at 455.

55 See, for instance, 'ECOWAS Court Holds 89 Sessions, Delivers 34 Judgments in 2015/2016 Legal Year', *Premium Times*, 28 September 2016.

56 F. Viljoen, 'Recent Developments in the African Regional Human Rights System', 4 *African Human Rights Law Journal* (2004) 344–52, at 345.

57 See AU Assembly, 'Decisions and Declaration: Decision on the 17th Annual Activity Report of the African Commission on Human and Peoples' Rights – Doc. EX.CL/109 (V)', Assembly/AU/Dec.49(III) Rev.1.

58 See Resolution of the AU Executive Council entitled 'Decision on the 19th Activity Report of the African Commission on Human and Peoples' Rights', 8th ordinary session, EX.CL/Dec.257(VIII). See also African Commission on Human and Peoples' Rights, Twentieth Activity Report, EX.CL/279/(IX) 46.

59 See Viljoen, *supra*, note 12.

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61 African Commission on Human and Peoples' Rights, Twenty-First Activity Report, EX.CL/322(X) 13, para. 60.

62 African Commission on Human and Peoples' Rights, Nineteenth Activity Report, EX.CL/236 (VIII) 11, para. 38.

63 *Ibid*.

64 (2000) AHRLR 25 (ACHPR 1997).

65 African Commission on Human and Peoples' Rights, Combined 32nd and 33rd Activity Report, EX.CLU/782(XXII) Rev. 2, 9, para 24.

66 (2000) AHRLR 212 (ACHPR 1998).

67 See V. O. Ayeni, 'Domestic Impact of the African Charter on Human and Peoples' Rights and the Protocol on the Rights of Women in Africa: A Case Study of Nigeria', Unpublished LLM Dissertation, University of Pretoria (2011) at 2.

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70 *Ibid*.

71 Alter, Gathii and Helfer, *supra*, note 69, at 306–15.

72 *Ibid*., at 300–6.

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74 Alter, Gathii and Helfer, *supra*, note 69, at 297–8.

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76 Alter, Gathii and Helfer, *supra*, note 69, at 319.

77 Viljoen, *supra*, note 12, 465–6.

78 *Ibid*.

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81 Viljoen, *supra*, note 12, at 294.

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83 'The ECOWAS Court has expressed concern over non-implementation of its judgment by the member states', *Vanguard Online News*, 28 June 2016, available at <http://www.vanguardngr.com/2016/06/ecowas-court-laments-non-execution-judgment-member-states/> (accessed 22 June 2022).

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85 See Decision on the 21st Activity Report of the African Commission, AU Doc EX.CL/Dec.344(X), para. 2(vi), referred to in Viljoen, *supra*, note 12, at 294.

86 See R. Gittleman, 'The African Charter on Human and Peoples' Rights', 22 (4) *Virginia Journal of International Law* (1981–1982) 667–714, at 694; H. J. Steiner and P. Alston, *International Human Rights in Context: Law, Politics and Morals* (Oxford University Press 2000) 920; J. Oloka-Onyango, 'Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?' 6 *Buffalo Human Rights Law Review* (2000) 39–72, at 72.

87 See G. M. Wachira and A. Ayinla, 'Twenty Years of Elusive Enforcement of the Recommendations of the African Commission on Human and Peoples' Rights: A Possible Remedy', 6 *African Human Rights Law Journal* (2006) 465–92, at 470–1.

88 Transcripts of the interview are on file with the author.

89 Coalition for an Effective African Court on Human and Peoples' Rights, *Booklet on the implementation of decisions of the African Court on Human and Peoples' Rights* (2017) at 8.

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91 See African Court Protocol, Article 29(2).

92 Coalition for an Effective African Court on Human and Peoples' Rights, *supra*, note 89, at 8.

93 See Gittleman, *supra*, note 86, at 694; Steiner and Alston, *supra*, note 86, at 920; Okafor, *supra*, note 86, at 41.

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95 Open Society Justice Initiative, *supra*, note 94, at 27.

96 E. L. Abdelgawad, 'The Execution of the Judgments of the European Court of Human Rights: Towards A Non-coercive and Participatory Model of Accountability', 69 *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht* (2009) 397–432, at 397.

97 See Coalition for an Effective African Court on Human and Peoples' Rights, *supra*, note 89, at 7.

98 See S. Nabaneh, 'The Impact of the African Charter and the Maputo Protocol in the Gambia', in V. O. Ayeni (ed.), *The Impact of the African Charter and the Maputo Protocol in Selected African States* (Pretoria University Law Press 2016) 77; V. O. Ayeni, 'The Impact of the African Charter and the Maputo Protocol in Nigeria', in V. O. Ayeni (ed.), *The Impact of the African Charter and the Maputo Protocol in Selected African States* (Pretoria University Law Press 2016) 185; T. Mutangi, 'The Impact of the African Charter and the Maputo Protocol in Zimbabwe', in V. O. Ayeni (ed.), *The Impact of the African Charter and the Maputo Protocol in Selected African States* (Pretoria University Law Press 2016) 282.

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100 See G. K. Kazoba and C. Mmbando, 'The Impact of the African Charter and the Maputo Protocol in Tanzania', in V. O. Ayeni (ed.), *The Impact of the African Charter and the Maputo Protocol in Selected African States* (Pretoria University Law Press 2016) at 251.

101 Open Society Justice Initiative, *supra*, note 94, at 28.

102 1999 ECOWAS Court Protocol, Article 24 as amended by 2005 ECOWAS Supplementary Protocol, Article 6.

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104 Open Society Justice Initiative, *supra*, note 94, at 28.

105 Open Society Justice Initiative, *supra*, note 32, at 32.

106 *Ibid.*, at 55.

107 *Ibid*.

108 See generally V. O. Ayeni (ed.), *The Impact of the African Charter and the Maputo Protocol in Selected African States* (Pretoria University Law Press 2016) 1–308.

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114 R. Murray and D. Long, *The Implementation of the Findings of the African Commission on Human and Peoples' Rights* (Cambridge University Press 2015) 50–3.

115 Murray and Long, *supra*, note 114, at 53. See, for instance, African Commission information sheet on the communication procedure, section on recommendations or decisions, available at <http://www.achpr.org/files/pages/communications/procedure/achpr_communication_procedure_eng.pdf> (accessed 22 June 2022).

116 See Open Society Justice Initiative, *supra*, note 32, at 28.

117 (2000) AHRLR 25 (ACHPR 1997).

118 African Commission on Human and Peoples' Rights, Combined 32nd and 33rd Activity Report, EX.CLU/782(XXII) Rev. 2, 9, para. 24.

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